

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
MAY 17 2013	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY: _____	DEPUTY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 ANDREW L. JORDAN,)
9 Plaintiff,)
10 v.)
11 PLAZA HOME MORTGAGE, INC., et. al,)
12 Defendants.)
13 _____)
3:11-cv-348-RCJ-WGC
ORDER

Currently before the Court is a Motion for Summary Judgment (#61).

BACKGROUND

I. Foreclosure Facts

Plaintiff Andrew L. Jordan executed a note secured by a deed of trust on a piece of property located at 8707 Malibu Drive, Reno, Nevada 89506, which was recorded in Washoe County on September 11, 2008. (Deed of Trust (#45-1) at 5-6). The mortgage, dated September 8, 2008, was for \$207,264. (*Id.*). The deed of trust named Plaza Home Mortgage, Inc. as lender, First American Title as trustee, and Mortgage Electronic Registration Systems, Inc. (“MERS”) as nominee for the lender and beneficiary. (*Id.* at 5).

On September 15, 2008, Plaza Home Mortgage sent Plaintiff a letter stating that it had sold his loan to Countrywide Home Loans, Inc. and that all payments should be sent to Countrywide Home Loans. (Transfer Letter (#7-8) at 2). On April 1, 2009, Plaintiff defaulted on his mortgage payments for an unspecified amount. (See Notice of Default (#7-9) at 2).

On March 1, 2010, Recontrust Company, N.A. executed a notice of default and election to sell under the deed of trust. (Notice of Default (#7-9) at 2-3). Charlotte Olmos—an

1 employee of First American Title Insurance Company, allegedly an agent for
 2 Recontrust—signed the notice of default. (*Id.* at 3).

3 On March 3, 2010, MERS executed an assignment of the deed of trust to BAC Home
 4 Loans Servicing LP (“BAC”), formerly known as Countrywide Home Loans Servicing, LP.
 5 (Assignment of Deed of Trust (#20-9) at 2). On that same day, BAC executed a substitution
 6 of trustee substituting Recontrust as trustee of the deed of trust in place of First American
 7 Title. (Substitution of Trustee (#20-10) at 2-3).

8 On September 9, 2010, First American National Default recorded a certificate from the
 9 Nevada Foreclosure Mediation Program indicating that no request for mediation had
 10 been made or that the grantor had waived mediation. (Mediation Certificate (#20-12) at 2).
 11 The certificate stated that the beneficiary could proceed with the foreclosure process. (*Id.*).
 12 That same day, Recontrust filed a notice of trustee’s sale with the Washoe County
 13 Recorder’s office. (Notice of Trustee’s Sale (#7-10) at 2). On December 27, 2010, Recontrust
 14 filed another notice of trustee’s sale with the Washoe County Recorder’s office. (Second
 15 Notice of Trustee’s Sale (#7-11) at 2). On April 11, 2011, Plaintiff recorded a notice of lis
 16 pendens with the Washoe County Recorder’s office. (Notice of Lis Pendens (#20-15) at 2-3).
 17 No foreclosure sale has taken place. (See Mot. for Summ. J. (#61) at 3).

18 **II. Procedural History**

19 In May 2011, Plaza Home Mortgage filed a petition for removal and attached Plaintiff’s
 20 complaint from the Second Judicial District in Washoe County. (Pet. for Removal (#1); Compl.
 21 (#1-2) at 10-74). In the complaint, Plaintiff sued Plaza Home Mortgage, Inc.; First American
 22 Title; Recontrust Company, N.A.; BAC Home Loans Servicing, LP; First American Title
 23 Insurance Company; and Charlotte Olmos. (Compl. (#1-2) at 10). Plaintiff’s 66-page
 24 complaint listed nine causes of action, including: (1) debt collection violations under NRS
 25 § 649.370; (2) unfair and deceptive trade practices under NRS § 598.0923; (3) unfair lending
 26 practices under NRS § 598D.100; (4) violation of the covenant of good faith and fair dealing;
 27 (5) violation of NRS § 107.080; (6) quiet title; (7) fraud in the inducement and through
 28 omission; (8) slander of title; and (9) abuse of process. (*Id.* at 37-71).

1 Plaza Home Mortgage, Recontrust, and BAC filed motions to dismiss. (Mot. to Dismiss
2 (#7, 20)). First American Title Insurance Company and Charlotte Olmos later joined in both
3 of these motions to dismiss. (Joinders (#13, 22)). In October 2011, the Court granted these
4 motions on all claims except for claim five for violations of NRS § 107.080 and claim six for
5 quiet title. (Order (#36) at 7). The Court held that Plaintiff had stated a cause of action for
6 claims five and six because Recontrust had executed the notice of default before it had
7 properly been substituted as trustee, and therefore had no authority to initiate the foreclosure
8 process. (*Id.*).

9 In May 2012, Recontrust and BAC (collectively “Defendants”) filed a motion for
10 summary judgment on the two remaining claims. (Mot. for Summ. J. (#45) at 5). Defendants
11 presented the declaration of Lorena Diaz—the Assistant VP Operations Team Lead for Bank
12 of America, N.A., successor by merger to BAC—asserting that BAC, in its capacity as servicer
13 of the note, had authorized Recontrust to initiate non-judicial foreclosure proceedings on
14 February 23, 2010. (See Diaz Decl. (#45-1) at 2-3). The Court found that the Diaz declaration
15 established that BAC was the servicer of the loan and that it had properly authorized
16 Recontrust to initiate the foreclosure process. (See Order (#58) at 5). However, the Court
17 found that the notice of default was not executed by Recontrust, but rather by First American
18 Title Insurance Company as agent of Recontrust. (*Id.*). The Court found that, although
19 Defendants had provided the Court with evidence that Recontrust had authority from BAC to
20 initiate the foreclosure process, no evidence had been presented that First American Title
21 Insurance Company had authority from Recontrust to execute the notice of default. (*Id.*). The
22 Court found that Defendants had failed to present evidence of the agency relationship
23 between First American Title Insurance Company and Recontrust and, thus, were not entitled
24 to summary judgment on the remaining claims. (*Id.*).

25 The pending motion for summary judgment now follows.

LEGAL STANDARD

27 In reviewing a motion for summary judgment, the court construes the evidence in the
28 light most favorable to the nonmoving party. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir.

1 1996). Pursuant to Fed.R.Civ.P. 56, a court will grant summary judgment “if the movant shows
 2 that there is no genuine dispute as to any material fact and the movant is entitled to judgment
 3 as a matter of law.” Fed.R.Civ.P. 56(a). Material facts are “facts that might affect the outcome
 4 of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106
 5 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). A material fact is “genuine” if the evidence is such
 6 that a reasonable jury could return a verdict for the nonmoving party. *Id.*

7 The moving party bears the initial burden of identifying the portions of the pleadings and
 8 evidence that the party believes to demonstrate the absence of any genuine issue of material
 9 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265
 10 (1986). A party asserting that a fact cannot be or is genuinely disputed must support the
 11 assertion by “citing to particular parts of materials in the record, including depositions,
 12 documents, electronically stored information, affidavits or declarations, stipulations (including
 13 those made for purposes of the motion only), admissions, interrogatory answers, or other
 14 materials” or “showing that the materials cited do not establish the absence or presence of a
 15 genuine dispute, or that an adverse party cannot produce admissible evidence to support the
 16 fact.” Fed. R. Civ. P. 56(c)(1)(A)-(B). Once the moving party has properly supported the
 17 motion, the burden shifts to the nonmoving party to come forward with specific facts showing
 18 that a genuine issue for trial exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
 19 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). “The mere existence of a
 20 scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be
 21 evidence on which the jury could reasonably find for the plaintiff.” *Anderson*, 477 U.S. at 252,
 22 106 S.Ct. at 2512. The nonmoving party cannot defeat a motion for summary judgment “by
 23 relying solely on conclusory allegations unsupported by factual data.” *Taylor v. List*, 880 F.2d
 24 1040, 1045 (9th Cir. 1989). “Where the record taken as a whole could not lead a rational trier
 25 of fact to find for the nonmoving party, there is no genuine issue for trial.” *Matsushita*, 475
 26 U.S. at 587, 106 S.Ct. at 1356.

27 **DISCUSSION**

28 Defendants file another motion for summary judgment on the two remaining claims for

1 violations of NRS § 107.080 and quiet title. (Mot. for Summ. J. (#61) at 1-2). Defendants, in
2 response to this Court's previous order, now provide evidence that First American Title had
3 authority to execute the notice of default. (*Id.* at 4).

4 Defendants attach a "Statement of Work" contract between Bank of America, N.A.,
5 successor by merger to BAC, and First American Title Insurance Company. (Statement of
6 Work (#61-1) at 2). The Statement of Work states that the document was entered into "as of
7 January 1, 2010" between the parties and that First American Title "shall provide title services
8 to ReconTrust Company, N.A. (a subsidiary of Bank of America, N.A. and referred to
9 collectively herein as 'ReconTrust') for properties subject to non-judicial foreclosures" where
10 ReconTrust is the trustee. (*Id.*). Per the Statement of Work, First American Title was to
11 perform "[a]ll other professional services requested and/or approved by ReconTrust and/or
12 Bank of America." (*Id.* at 3). Bank of America signed the document on August 5, 2010, and
13 First American Title signed the document on March 10, 2010. (*Id.* at 5).

14 Plaintiff filed an opposition and Defendants filed a reply. (Opp'n to Mot. for Summ. J.
15 (#62); Reply to Mot. for Summ. J. (#64)).

16 In this case, the Court finds that Defendants have provided the Court with evidence that
17 First American Title Insurance Company had authority from Recontrust to execute the notice
18 of default on March 1, 2010. The Statement of Work document demonstrates that effective
19 January 1, 2010, First American Title was to provide non-judicial foreclosure services to
20 ReconTrust at ReconTrust and/or Bank of America's request. Additionally, the Court
21 acknowledges that Bank of America and First American Title did not execute the Statement
22 of Work document until after March 1, 2010. However, the Court finds that this is irrelevant
23 because the contract states that the effective date of the Statement of Work contract was
24 January 1, 2010. See *Canfora v. Coast Hotels & Casinos, Inc.*, 121 P.3d 599, 603 (Nev.
25 2005) (holding that when a contract is clear on its face, the contract will be construed from the
26 written language and enforced as written); see also *Television Events & Mktg., Inc. v. AMCON*
27 *Distrib., Co.*, 484 F. Supp. 2d 1124, 1138 (D. Haw. 2006) (finding that an agreement that is
28 entered into "as of" an earlier date than the execution date is effective on that earlier date).

1 The Court now grants Defendants' motion for summary judgment on claims five and six with
2 prejudice.

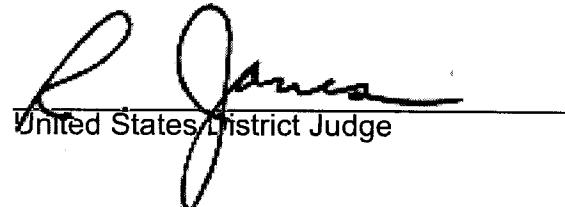
3 **CONCLUSION**

4 For the foregoing reasons, IT IS ORDERED that the Motion for Summary Judgment
5 (#61) is GRANTED with prejudice. There are no remaining causes of action in this case.

6 IT IS FURTHER ORDERED that the notice of lis pendens on the property is cancelled
7 and expunged.

8 The Clerk of the Court shall enter judgment accordingly.

9
10 DATED: this 17th day of May, 2013.

11 
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28